Dato' Seri Anwar bin Ibrahim v Dato' Seri Dr Mahathir bin Mohamad

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-23-07 OF 1999
KAMALANATHAN RATNAM J
30 AUGUST 1999

Civil Procedure *— Striking out — Action against Prime Minister — Prime Minister and cabinet members to be protected from frivolous, vexatious and abusive suits — Whether such actions ought to be struck out*

Tort *— Defamation — Defences — Justification — Defendant is Prime Minister and Home Minister of Malaysia — Whether words spoken by defendant alleging sexual misconduct of plaintiff are true — Whether defendant had legal, moral and social duty to make such statements*

Tort *— Defamation — Defences — Qualified privilege — Accusations made by plaintiff — Whether defendant's words were uttered to repel accusations made by plaintiff — Whether words were made bona fide and relevant to accusations made by plaintiff*

The plaintiff — the former Malaysian Deputy Prime Minister, Malaysian Minister of Finance and Deputy President of UMNO, the main component party of the Barisan Nasional of Malaysia — brought this action against the defendant — the Prime Minister and Home Minister of Malaysia — for defamation. The plaintiff, who had been either dismissed or removed from his various governmental and political positions, claimed that on 22 August 1998, the defendant falsely and maliciously spoke and published to national and international journalists of and concerning the plaintiff as well as accusing the plaintiff of homosexuality. However, the facts revealed that on 19 August 1998, one Dr Munawar Ahmad Anees ('Munawar') and one Sukma Darmawan Saasmitaat Madja ('Sukma') were charged separately in the Sessions Court in Kuala Lumpur under s 377D of the Penal Code for allowing themselves to be sodomised by the plaintiff. Both Munawar and Sukma pleaded guilty, were convicted and upon mitigation, sentenced to six months imprisonment each. In mitigation, Munawar had stated that the plaintiff made sexual advances to him as early as in 1989 and that immoral activities between the plaintiff and Munawar took place in the plaintiff's car and house. Munawar admitted that at all times he was the passive partner. Sukma, admitted to allowing the plaintiff to sodomise him at the plaintiff's official residence and in mitigation submitted a written, signed confession. The cases involving Munawar and Sukma were given wide and prominent publicity by the mass media, in particular by the local daily newspapers the very next day after their conviction and sentence. The facts further revealed that the defendant, as Prime Minister and Home Minister, received information from the police regarding the plaintiff's homosexual activities as early as in 1993 and of the plaintiff's homosexual relationships with Munawar and Sukma.

A The defendant admitted to having made a statement on the day in question but contended that his statement was based on matters that were already of public knowledge and on information related to him by the police and that they were true in substance and in fact. The defendant maintained that as Prime Minister of the country, he had a duty to the public who elected him and to his party to explain the B reasons for the plaintiff's dismissal from the various positions. The defendant further contended that he was badgered by various sources for explanations on the plaintiff's dismissal from his various offices and that the alleged defamatory statement that he made was a direct response to a question posed by a member of the press at a press C conference. The defendant relied, inter alia, on the defences of justification and qualified privilege and applied to strike out the plaintiff's amended statement of claim and indorsement of claim pursuant to O 18 r 19(1)(a), (b) and (d) and also under the inherent jurisdiction of the court.

D **Held**, allowing the defendant's application:

(1) From a study of the charges against Munawar and Sukma, the admitted facts, and Sukma's confession, it was clear that the acts of gross indecency committed by Munawar and Sukma involved two persons and that the other person involved in both instances, E was none other than the plaintiff himself. The information conveyed through the defendant's words were in respect of matters that had been admitted in court as being true and which were given wide publicity in all the newspapers two days prior to the date when the defendant spoke the said words. The F information was already of public knowledge at the date when the words were spoken (see pp 67G–H, 68A–B).

(2) Given the indisputable facts before him based on the events that took place prior to the defendant speaking the said words and the calls made on the defendant to explain the removal of the plaintiff as the Deputy Prime Minister and the Deputy President of G UMNO, the defendant was duty bound to have disclosed the information concerning his ex-deputy. As the chief executive of the government, the defendant was under a legal, moral and social duty to inform the nation of the matters concerning the plaintiff. The information that was given to the defendant as disclosed in H the press conference was true in substance and in fact. The defendant's words that referred to the imputation or conclusion based on the information given to him were the correct imputation or conclusion to be drawn from the established facts including the conviction of Munawar and Sukma and the admitted confession. The conviction of Munawar and Sukma I brought the facts within the ambit of s 8 of the Defamation Act 1957 and accordingly the defence of justification was open to the defendant (see pp 68C–D, 70H, 69C–E).

(3) The plaintiff upon his removal as Deputy Prime Minister and Deputy President of UMNO launched vituperative attacks against the defendant, the officers of the Attorney General's chambers, the government and UMNO. The attacks included an allegation that the plaintiff's removal from his various offices was as a result of 'a political conspiracy of the highest level'. In the circumstances, the defendant as the Prime Minister and President of UMNO was therefore obliged and compelled to respond to these attacks by the words spoken by him. The defendant's words were uttered with a view to repelling the charges made by the plaintiff, they were made bona fide and were relevant to the accusations made by the plaintiff. The defendant's words were therefore spoken on an occasion of qualified privilege. The defendant spoke the words with a mind devoid of malice and had also satisfied the tests set out in *Reynolds v Times Newspapers Ltd* [1998] 3 WLR 863 for assessing whether the defence of qualified privilege applies (see pp 69H–70C, 72F, 70I–71C).

(4) The 'primus inter pares' of the country and his cabinet colleagues must be protected from frivolous, vexatious and abusive suits. Otherwise, rather than running the country towards achieving peace and prosperity for its citizens, the officials of the government will forever be looking over their shoulders for fear of being dragged to court with an unwanted but heralded suit. Whilst no one is above the law, yet the court must be ever vigilant, never indolent, ever watchful, never fearful of its duty to check on the conspiratorial machinations of parties or persons motivated with the express desire of dragging top officials who run the country, to court with intent to cause nothing more than embarrassment to such officials. The plaintiff's claim was one that was frivolous, vexatious and an abuse of the process of the court and should therefore be struck out (see pp 72F–I).

[Bahasa Malaysia summary

Plaintif — bekas Timbalan Perdana Menteri Malaysia, Menteri Kewangan Malaysia dan Naib Presiden UMNO, komponen utama parti Barisan Nasional Malaysia — telah memulakan tindakan terhadap defendan — Perdana Menteri dan Menteri Dalam Negeri Malaysia — untuk fitnah. Plaintif, yang telah sama ada dipecat atau disingkirkan daripada pelbagai jawatan-jawatan kerajaan dan politik beliau, menuntut bahawa pada 22 Ogos 1998, defendan telah secara palsu dan niat jahat bercakap dan mengumumkan kepada wartawan-wartawan tempatan dan antarabangsa tentang dan berkenaan plaintif dan juga telah mendakwa kehomoseksualan plaintif. Bagaimanapun, fakta-fakta telah mendedahkan bahawa pada 19 Ogos 1998, seorang bernama Dr Munawar Ahmad Anees ('Munawar') dan seorang bernama Sukma Darmawan Saasmitaat Madja ('Sukma') telah dituduh secara berasingan di dalam

A Mahkamah Sesyen di Kuala Lumpur di bawah s 377D Kanun Keseksaan kerana membenarkan diri mereka diliwat oleh plaintif. Kedua-dua Munawar dan Sukma telah mengaku bersalah, telah disabitkan dan setelah mitigasi, dihukum penjara selama enam bulan tiap seorang. Di dalam mitigasi, Munawar telah menyatakan bahawa plaintif telah membuat desakan seksual terhadap beliau seawal tahun B 1989 dan bahawa kegiatan-kegiatan kurang bermoral antara plaintif dan Munawar berlaku di dalam kereta dan rumah plainitf. Munawar telah mengaku bahawa pada setiap masa beliau merupakan pasangan yang pasif. Sukma, mengaku telah membenarkan plaintif meliwat beliau di rumah rasmi plaintif dan di dalam mitigasi telah C mengemukakan suatu pengakuan bertulis yang ditandatangani. Kes-kes yang melibatkan Munawar dan Sukma telah diberi publisiti yang meluas dan menonjol oleh pihak media, khususnya oleh akhbar-akhbar harian tempatan sehari selepas sabitan dan hukuman mereka. Fakta-fakta seterusnya telah mendedahkan bahawa defendan, sebagai seorang Perdana Menteri, telah menerima D maklumat daripada polis berhubung dengan kegiatan-kegiatan homoseksual plaintif seawal 1993 dan hubungan homoseksual plaintif dengan Munawar dan Sukma.

Defendan telah membuat pengakuan bahawa beliau telah membuat pernyataan pada hari yang dibincangkan tetapi menegaskan E bahawa pernyataan beliau adalah berdasarkan perkara-perkara yang sudahpun diketahui umum dan atas maklumat berhubung dengan beliau oleh polis dan bahawa ia adalah benar dalam isi dan fakta. Defendan mempertahankan bahawa sebagai seorang Perdana Menteri negara ini, beliau mempunyai tanggungjawab kepada rakyat yang telah mengundi beliau dan kepada parti beliau untuk menjelaskan F sebab-sebab pemecatan plaintif daripada pelbagai jawatan-jawatannya. Defendan seterusnya telah menegaskan bahawa beliau telah dipaksa oleh pelbagai sumber untuk memberi suatu penjelasan terhadap pemecatan plaintif daripada pelbagai jawatan-jawatannya dan bahawa dakwaan penyataan fitnah yang dibuat oleh beliau G merupakan akibat langsung daripada soalan yang telah diajukan oleh seorang ahli wartawan di sidang akhbar itu. Defendan bergantung kepada, antara lain, pembelaan-pembelaan justifikasi dan perlindungan bersyarat dan memohon untuk membatalkan pindaan penyataan tuntutan plaintif dan pengindorsan tuntutan menurut A 18 k 19(1)(a), (b) dan (d) dan juga di bawah bidang kuasa sedia ada H mahkamah.

Diputuskan, membenarkan permohonan defendan:

(1) Daripada kajian ke atas tuduhan-tuduhan terhadap Munawar dan Sukma, fakta-fakta yang diakui, dan pengakuan Sukma, adalah I jelas bahawa kelakuan yang melampui tabii oleh Munawar dan Sukma melibatkan dua orang dan bahawa orang lain yang terlibat di dalam kedua-dua perlakuan ini, tidak lain daripada plaintif

sendiri. Maklumat yang disampaikan melalui kata-kata defendan adalah berhubung dengan perkara-perkara yang telah diakui di mahkamah sebagai benar dan yang telah diberi publisiti yang meluas di dalam semua akhbar-akhbar dua hari sebelum tarikh defendan telah berkata sedemikian. Maklumat tersebut sudahpun merupakan pengetahuan umum pada ketika kata-kata tersebut dilafazkan (lihat ms 67G–H, 68A–B). A B

(2) Dengan adanya fakta-fakta yang tidak boleh disangkal lagi oleh beliau berdasarkan kejadian-kejadian yang telah berlaku sebelum defendan melafazkan kata-kata itu dan panggilan-panggilan yang dibuat oleh defendan untuk menjelaskan pemecatan plaintif sebagai Timbalan Perdana Menteri dan Naib Presiden UMNO, defendan mempunyai tanggungjawab untuk mendedahkan maklumat berhubung bekas timbalan beliau. Sebagai ketua eksekutif kerajaan, defendan mempunyai tanggungjawab di sisi undang-undang, moral dan sosial untuk memaklumkan kepada rakyat jelata tentang perkara-perkara yang melibatkan plaintif. Maklumat yang telah diberikan kepada defendan sebagaimana yang didedahkan olah sidang akhbar adalah benar dalam isi dan fakta. Kata-kata defendan yang merujuk kepada tuduhan atau kesimpulan berdasarkan maklumat yang diberikan kepada beliau merupakan tuduhan atau kesimpulan yang benar yang diperolehi daripada fakta-fakta kukuh termasuklah sabitan Munawar dan Sukma dan pengakuan yang telah dibuat. Sabitan Munawar dan Sukma telah membawa fakta-fakta itu di dalam lingkungan s 8 Akta Fitnah 1957 dan sewajarnya pembelaan justifikasi adalah terbuka kepada defendan (lihat ms 68C–D, 70H, 69C–E). C D E

(3) Plaintif, setelah pemecatan beliau sebagai Timbalan Perdana Menteri dan Naib Presiden UMNO, telah memulakan serangan-serangan penuh cercaan terhadap defendan, pegawai-pegawai di jabatan Peguam Negara, kerajaan dan UMNO. Serangan-serangan tersebut termasuklah dakwaan bahawa pemecatan plaintif daripada pelbagai jawatan-jawatannya telah disebabkan oleh 'konspirasi politik tertinggi'. Di dalam keadaan berikut, defendan sebagai Perdana Menteri dan Presiden UMNO, oleh itu telah terpaksa dan terdesak untuk menjawab serangan-serangan ini melalui kata-kata yang dicakapkan oleh beliau. Kata-kata defendan dilafazkan dengan maksud untuk menolak tuduhan-tuduhan yang dibuat oleh plaintif, yang telah dibuat secara bona fide dan berkaitan dengan dakwaan-dakwaan yang dibuat oleh plaintif. Kata-kata defendan, oleh demikian, telah dilafazkan di dalam keadaan perlindungan bersyarat. Defendan telah melafazkan kata-kata tersebut dengan tujuan tidak mempunyai niat jahat dan juga telah memuaskan ujian yang terkandung di dalam kes *Reynolds v Times Newspapers Ltd* [1998] 3 WLR 863 yang mentafsir sama ada pembelaan perlindungaan bersyarat adalah terpakai (lihat ms 69H–70C, 72F, 70I–71C). F G H I

(4) 'Primus inter parte' negara ini dan teman sekabinet beliau perlu dilindungi daripada saman-saman yang remeh, menyusahkan dan disalahgunakan. Jika tidak, jauh dari mengendalikan sebuah negara untuk mencapai keamanan dan kesejahteraan bagi rakyat jelatanya, pegawai-pegawai kerajaan akan sentiasa melihat ke belakang kerana takut diheret ke mahkamah dengan saman yang tidak diingini. Walaupun tiada sesiapa yang melebihi undang-undang, mahkamah masih perlu sentiasa berjaga-jaga, tidak sekali berat tulang, sentiasa berhati-hati, tidak takut terhadap tanggung-jawabnya untuk memeriksa pihak-pihak atau orang yang berkomplot konspirasi yang mempunyai hasrat yang nyata untuk mengheret pegawai-pegawai atasan yang mengendalikan negara, ke mahkamah dengan niat untuk hanya memalukan pegawai-pegawai tersebut. Tuntutan plaintif merupakan suatu tuntutan yang remeh, menyusahkan dan menyalahgunakan proses mahkamah dan oleh demikian patut dibatalkan (lihat ms 72F–I).]

Notes

For cases on striking out generally, see 2(2) *Mallal's Digest* (4th Ed, 1996 Reissue) paras 4335–4344.

For cases on defamation generally, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 138–261.

Cases referred to

Blackshaw v Lord & Anor [1984] QB 1 (refd)
Lange v Atkinson [1998] 3 NZLR 424 (refd)
Lange v Australian Broadcasting Corp (1997) 189 CLR 520 (refd)
Marchioness of Huntly v Gaskell [1905] 2 Ch D 656 (refd)
Perera (MG) v Peiris & Anor [1949] AC 1 (refd)
Reynolds v Times Newspapers Ltd [1998] 3 WLR 863 (refd)
Webb v Times Publishing Co Ltd [1960] 2 QB 535 (refd)
Youngerwood v Guardian Newspapers Ltd (unreported), 13 June 1997 (refd)

Legislation referred to

Defamation Act 1957 ss 8, 12
Rules of the High Court 1980 O 18 r 19(1)(a), (b), (d)

Karpal Singh (*M Manoharan* with him) (*Karpal Singh & Co*) for the plaintiff.

Mohd Adnan bin Shuaib (*Cecil Abraham* and *N Chandra* with him) (*Shearn Delamore & Co*) for the defendant.

Cur Adv Vult

Kamalanathan Ratnam J:

FACTS

The plaintiff was the former Deputy Prime Minister, Minister of Finance and Deputy President of UMNO, the main component party of the Barisan Nasional (the ruling party) of Malaysia. He filed this suit against the Prime Minister of Malaysia for defamation.

CASE OF THE PLAINTIFF

It is the plaintiff's case that on 22 September 1998, the defendant, at his office in Kuala Lumpur, falsely and maliciously spoke and published to a crowd of journalists from both the national and the international media of and concerning the plaintiff and accused the plaintiff of homosexuality. The plaintiff prayed for:

(1) damages amounting to RM100,000,000 which included aggravated and/or exemplary damages with interest;

(2) an injunction restraining the defendant by himself or by his servants or agents from further uttering the offending words or words to the like effect of or concerning the plaintiff; and

(3) any other relief the court found just and proper.

The words uttered by the defendant which the plaintiff finds offensive have been pleaded in the amended statement of claim and they are as follows:

> I had disbelieved the homosexuality charges at first but was convinced when I personally interviewed Anwar's partner.
>
> They had not only performed sodomy, but during the process, he was ... I don't know how you call it ... he was masturbating this man.
>
> Do I go around town and tell the world that this is what my deputy was doing?

CASE FOR THE DEFENDANT

Whilst admitting to making a press statement on the day in question when various questions were posed to him by the media including why the plaintiff was dismissed as the Deputy Prime Minister, Minister of Finance and Deputy President of UMNO, the defendant said the following words which have been pleaded in the defence:

> It is difficult for me to explain and I think it will be difficult for them to explain. I'll tell you what the police tells me ... (Dr Munawar) Anwar ... Anees told them. They had not only performed sodomy but during the process he was doing ... he was ... I don't know what you call it, he was masturbating this man. This is what ... do I go around the town and tell the world that this is what my deputy was doing? And yet he did it. I mean, I cannot understand how a man would invent a story like that but this is what he told me, he told the police. He didn't tell me, he told the police. Their behaviour was despicable. And this is a man who talks about other people being despicable. His behaviour was despicable.

The defendant contended that his statement was based on matters that were already of public knowledge and on information related to him by the police and that they are true in substance and in fact. He maintained that as the Prime Minister of the country he had a duty to the public who elected him and his party to explain the reasons for the dismissal of the plaintiff from the various positions. He also relied on the defence of qualified privilege.

THE APPLICATION

This is the defendant's application to strike out the indorsement in the amended writ of summons and the amended statement of claim pursuant to the provisions of O 18 r 19(1)(a), (b) and (d) of the Rules of the High Court 1980 ('the RHC') and also under the inherent jurisdiction of the court.

FINDINGS OF THE COURT

Words spoken by the defendant

Before I consider the import of the words spoken by the defendant of the plaintiff it is pertinent to note certain relevant antecedent events which precipitated the calling of the press conference on 22 September 1998.

Dr Munawar Ahmad Anees (Munawar)

On 19 September 1998, Munawar pleaded guilty in the Sessions Court in Kuala Lumpur in Case No 62-134-1998, and was convicted under s 377D of the Penal Code for allowing the plaintiff to sodomise him. Munawar was sentenced to six months' imprisonment. The facts relating to the said charge as read out in court and which the said Munawar admitted to were as follows:

(i) The accused, Munawar, is a consultant at Sykt Real Mild, Jln Riong, Kuala Lumpur. In 1989 he was appointed to work by contract as a visiting lecturer in the field of Islamic Philosophy of Science at the Institute of Technology Mara, Shah Alam. While working here he came to meet the plaintiff who at that time was the Minister of Education, Malaysia. Their relationship was not limited to that of a lecturer and a Minister but was one of friends and intellectual companions. From time to time the plaintiff would invite the said Munawar to his house at No 8 Setia Murni 1, Bkt Damansara to discuss or show articles and latest books owned/obtained by the plaintiff. On one night in the month of March, 1993, the plaintiff invited the said Munawar to his house at No 8 Jalan Setia Murni 1, Bkt Damansara. As usual, the said Munawar accepted the invitation and went to the plaintiff's house. Whilst at the house, the plaintiff satisfied his lust with the said Munawar. In their act, the said Munawar allowed the plaintiff to insert his (the plaintiff's) penis into his anus. This act occurred in a small room near a library on the upper floor of the said house.

(ii) Further to (i) above and in the plea of mitigation advanced on behalf of the said Munawar, it was stated that the plaintiff had made sexual advances to the said Munawar as early as 1989 and that the 'immoral activities' between the plaintiff and the said Munawar took place in the plaintiff's car and house. It was further pleaded in mitigation that the said Munawar was at all times the passive partner.

Sukma Darmawan Saasmitaat Madja (Sukma)

On 19 September 1998, Sukma pleaded guilty in the Sessions Court in Kuala Lumpur in Case No 62-136 of 1998 and was convicted under s 377D of the Penal Code for allowing the plaintiff to sodomise him. Sukma was sentenced to six months' imprisonment. The facts relating to the said charge as read out in court and which the said Sukma admitted were as follows:

(i) The said Sukma is a businessman. He is the plaintiff's adopted brother and although he had his own place of residence at Unit No 10-7-2 at Tivoli Villa at Jln Medan Tanduk Bangsar, Kuala Lumpur, he had also been given a specific room at the official residence of the Deputy Prime Minister of Malaysia at No 47, Jalan Damansara, Federal Territory of Kuala Lumpur by the plaintiff. One night in the month of April 1998 the said Sukma had gone to the official residence of the Deputy Prime Minister to spend the night in his allotted room at the said residence. That night, after the plaintiff's family had gone to sleep, the plaintiff entered Sukma's room. In that room, the plaintiff invited the said Sukma to commit a sexual act against the order of nature, that is sodomy. The said Sukma allowed the plaintiff to insert his penis into his (Sukma's) anus.

(ii) In the plea in mitigation advanced on behalf of the said Sukma, a written confession signed by the said Sukma was tendered to Court and marked as an exhibit.

The information from the police

From the affidavits, it is clear that the defendant, as the Prime Minister and also as the Home Minister, had received information from the police of the plaintiff's homosexual activities as early as in 1993 and of his homosexual relationships with the said Munawar and Sukma.

I have no hesitation in concluding that the words spoken by the defendant were merely statements of facts already widely published before the impugned words were spoken. Even though the defendant has been briefed by the police much earlier, he however did not make any statement in regard to this until this information had been widely published in all newspapers, following the conviction of Munawar and Sukma.

A *Are the words spoken true?*

It is clear that the defendant's words are based on the information gathered by him from the sources identified by him in the words spoken at the press conference together with the acquisition of the news relating to the convictions of Munawar and Sukma carried in all the newspapers on B 20 September 1998, that is, two days before the date on which the defendant's words were spoken. The true purport of the defendant's words must be gathered from the exact words spoken. If the words as spoken are borne out by the facts, then the defence of justification will clearly be available to the defendant. In other words the defendant's words must be C construed and determined in their context as spoken.

In his affidavit in support the defendant has referred this court to the specific acts of gross indecency with which Munawar was charged. The proceedings in respect of the said charge were held in open court. Munawar pleaded guilty to the charge, admitted the facts relating to the offence as D read out to him to be true and accurate, was convicted, put up a plea in mitigation through his counsel following which he was convicted. It is also evident from the charge, the facts of the case as admitted by Munawar and the notes of proceedings and the grounds of judgment, copies of which were all exhibited, that the plaintiff played an active role in and about the acts of gross indecency with what Munawar was charged. Besides the said offence E was stated to have taken place at the plaintiff's own residence. In the circumstances, it is my finding that all these facts relating to Munawar's charge and conviction point directly to the involvement of the plaintiff and indeed confirm the defendant's words to be true in substance and in fact. It is my judgment therefore that the defence of justification is obviously F available to the defendant.

Sukma was also charged with the offence of committing acts of gross indecency with the plaintiff at his official residence. Sukma was, on his own plea of guilt, convicted and sentenced for acts of gross indecency with which he was charged, following his unequivocal admission of the facts as being G true in substance and in fact. In Sukma's case there was also a confession signed by him and tendered in court as part of his plea in mitigation.

From a study of the charges, the admitted facts, and the confession which were also exhibited by the defendant in support of his affidavit, it is clear to my mind that the acts of gross indecency committed by Munawar H and Sukma involved two persons and that the other person involved in both instances, was none other than the plaintiff himself. What is relevant from all these exhibits is that Sukma pleaded guilty, was convicted and sentenced on the said acts of gross indecency, on 19 September 1998, that is, three days before the defendant spoke the words in question. The defendant has in his affidavit drawn the court's attention to the wide and prominent I publicity that was given to the cases involving Munawar and Sukma by the mass media, and in particular the local daily newspapers, the very next day of the proceedings. It is plain as a pikestaff therefore that at the date the

defendant spoke the said words, the immoral activities of the plaintiff, to wit, his direct participation in the acts of gross indecency on which Munawar and Sukma were charged and convicted, were very much of public knowledge. The defendant's words spoken on 22 September 1998 therefore did not state anything by way of news for the first time. The information conveyed through the defendant's words were in respect of matters that had been admitted in Court as being true and which were given wide publicity in all the newspapers two days prior to the date when the defendant spoke the said words. The information therefore was already of public knowledge at the date when the words were spoken.

Defendant duty bound to inform the public

It is my judgment therefore that given the indisputable facts before him based on the events that took place prior to the defendant speaking the said words, and the calls made on the defendant to explain the removal of the plaintiff as the Deputy Prime Minister and the Deputy President of UMNO, the defendant as the Prime Minister of the country, was indeed duty bound to have disclosed the information concerning his ex-deputy. The criminal proceedings relating to Munawar and Sukma which clearly identified the plaintiff as the active partner in the acts of gross indecency with which they were charged and convicted, and the news item relating to the said proceedings carried by all the newspapers in circulation in the country no doubt excited public interest including that of the journalists who were wanting to question the defendant on the news which is undoubtedly of national interest. It is also relevant to note that the defendant's words were in response to questions which were put to him. I find that the said convictions of Munawar and Sukma confirm the truth of the statements. In the circumstances, it is my judgement that the defence of justification is available to the defendant. To my mind, the claim is clearly one which is 'obviously unsustainable'. The convictions of the said two persons and their sentencing still stand. It has also been pointed out to me that on 21 May 1999 the High Court (Criminal Division) at Kuala Lumpur in Permohonan Jenayah No 44-116-98 had ordered, inter alia, that the application of Sukma seeking an extension of time to file the petition of appeal in the appeal against the conviction and sentence be dismissed. In any case, in *Marchioness of Huntly v Gaskell* [1905] 2 Ch D 656 Cozens-Hardy LJ said in the Court of Appeal at p 667:

> A judgment is, in my opinion, not the less an estoppel between the parties to the action because it may be reversed on appeal to the House of Lords.

In the circumstances, it is my judgment that the fact that Munawar's appeal is still pending does not affect the conclusiveness of his conviction as of this point in time. In any case in so far as Sukma is concerned there is the additional factor of his own confession to being a partner to the plaintiff in and about the acts of gross indecency committed on him by the plaintiff and with which he was charged and convicted.

Justification is a defence

It is settled law that in a suit for defamation, justification is a complete defence, if the same is available to the defendant.

At common law the defendant was required to prove the truth of all the material statements in the libel. However, by virtue of s 8 of the Defamation Act 1957 ('the Act') the defence of justification 'shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges'. It follows therefore that what is true, cannot be defamatory. This must be on grounds of public policy because the exposure of truth must be paramount when compared to that of reputation. Therefore clearly there can be no room even for malice if the matter published is found to be true. Applying s 8 of the Act to the facts of this case, it is obvious that the information that was given to the defendant as disclosed in the press conference is true in substance and in fact, also taking into account the wide publicity by the press, just two days prior to the press conference in question. It is my finding that the defendant's words that refer to the imputation or conclusion based on the information given to him, are the correct imputation or conclusion to be drawn from the established facts including the conviction of Munawar and Sukma and the admitted confession. It is my judgment that the conviction of Munawar and Sukma bring the facts within the ambit of s 8 of the Act. Having considered all matters I hold that the defence of justification is clearly open to the defendant and on this ground alone this claim ought to be struck out.

Qualified privilege

The defendant also relies on qualified privilege. Under our law this is a common law defence as the Act provides for no statutory defence of qualified privilege for individuals. Section 12 of the Act gives qualified privilege to publication in a newspaper of any report or other matter as is mentioned in Part I of the Schedule to the Act unless of course such publication is proved to be made with malice. *Gatley on Libel and Slander* (9th Ed) states at para 14.49 as follows:

> ... a person whose character or conduct has been attacked is entitled to answer such attack, and any defamatory statements he may make about the person who attacked him will be privileged, provided they are published bona fide and are fairly relevant to the accusations made.

The question is, does qualified privilege apply in this case? It is in evidence that the defendant, in his capacity as the Prime Minister of the country, received information relating to acts of gross indecency committed by the plaintiff, who was his deputy. On 2 September 1998 and on 3 September 1998, the plaintiff was thus removed from his position as the Deputy Prime Minister and Deputy President of UMNO, respectively. Following his removal from these two Malaysian high offices, the plaintiff launched attacks against the defendant, the officers of the Attorney General's Chambers, the police, the government and UMNO. Particulars and details

of these vituperative attacks have been itemised in the defence. The said attacks amongst others, included an allegation that the plaintiff's removal from his office as the Deputy Prime Minister as well as from his office as the Deputy President of UMNO was as a result of 'a political conspiracy of the highest level'. Of course, these allegations were widely reported in the national and international media.

I hold that the defendant, as the Prime Minister and President of UMNO, was therefore obliged and indeed compelled to respond to these attacks by the words spoken by him, being the subject matter of this action. It is my judgment that the defendant's words were uttered with a view to repelling the charges made by the plaintiff and that they were made bona fide and are relevant to the accusations made by the plaintiff and I therefore hold that the defendant's words were spoken on an occasion of qualified privilege. It is my judgment that the defendant spoke the words of and concerning the plaintiff who was then occupying a high position in the Government and the leading component party of the Barisan Nasional, that is UMNO. The defendant's words therefore concerned the government and the political affairs of the country in that they related to the removal of the plaintiff from both the cabinet and from UMNO. The defendant's words, I find, indeed concerned the question as to the plaintiff's fitness for the public offices he had previously occupied and to my mind, this therefore clearly became a matter of public interest.

In *Lange v Australian Broadcasting Corp* (1997) 189 CLR 520, the High Court of Australia held that in proceedings for defamation, the categories of qualified privilege in defence of a claim include a communication made to the public on a government or political matter, including discussion of government or politics at a state or territory or local government level. Further in *Lange v Atkinson* [1998] 3 NZLR 424, the New Zealand Court of Appeal held that the defence of qualified privilege applied to generally published statements made about the actions and qualities of those currently or formerly elected to Parliament and those with immediate aspirations to be members, so far as those actions and qualities directly affected their capacity (including their personal ability and willingness) to meet their public responsibilities. The determination of the matters that bore on that capacity depended on a consideration of what was properly a matter of public concern rather than of private concern. It is my judgment therefore that the acts of the plaintiff and his conduct relating to acts of gross indecency directly affect the plaintiff's capacity to meet his public responsibility and are therefore matters well within the scope and right of the defendant to comment upon as being matters of public concern. As the chief executive of the government, the defendant was in my view under a legal, moral and social duty to inform the nation of the matters concerning the plaintiff and at the same time to explain to the nation the response of the government and UMNO to the several attacks made by the plaintiff as they were matters of general public interest which the public had every reason, and an interest, to know. In assessing whether the defence of qualified privilege applies, the Court of Appeal in *Reynolds v Times Newspapers Ltd* [1998] 3 WLR 863 determined that the following question need to be

answered in relation to any individual occasion. Lord Bingham of Cornhill CJ in handing down the judgment of the court said at p 899 as follows:

(1) Was the publisher under a legal, moral or social duty to those to whom the material was published (which in appropriate cases, as noted above, may be the general public) to publish the material in question? (We call this the duty test.)

(2) Did those to whom the material was published (which again in appropriate cases may be the general public) have an interest to receive that material? (We call this the interest test.)

(3) Were the nature, status and source of the material, and the circumstances of the publication, such that the publication should in the public interest be protected in the absence of proof of express malice? (We call this the circumstantial test.)

We make reference to 'status' bearing in mind the use of that expression in some of the more recent authorities to denote the degree to which information on a matter of public concern may (because of its character and known provenance) command respect: see the *Perera (MG) v Peiris & Anor* [1949] AC 1 at p 21; the *Webb v Times Publishing Co Ltd* [1960] 2 QB 535 at p 568; *Blackshaw v Lord & Anor* [1984] QB 1 at pp 26, 35; and also the judgment, in chambers, of Eady J in *Youngerwood v Guardian Newspapers Ltd* (unreported), 13 June 1997. The higher the status of a report, the more likely it is to meet the circumstantial test. Conversely, unverified information from unidentified and unofficial sources may have little or no status, and were defamatory statements of fact are to be published to the widest audience on the strength of such sources, the publisher undertakes a heavy burden in showing that the publication is 'fairly warranted by any reasonable occasion or exigency'.

It is clear that even based on the questions posed in *Reynolds* the defendant has satisfied the required three tests. In fact emphasis was given to the word 'status' in *Reynolds* in respect of the material spoken. The higher the status of the information or the report on which the defendant had based his pronouncement, the greater the weight for such information to command respect and thus the need to disseminate such information to the public as being a matter of public concern.

Further, in this case the defendant was badgered by various sources for an explanation. The defendant has pleaded in his defence the following requests for an explanation from him:

(a) On or around the 3 or 4 September 1998, the opposition leader of Parliament, Lim Kit Siang, issued a press statement stating that the defendant as Prime Minister owed the country and the international community an explanation for the plaintiff's dismissal from his cabinet positions.

(b) In a press interview or statement given on or around 4 September 1998, the President of Aliran, P Ramakrishnan stated that the public had a right to know the reasons for the plaintiff's dismissal from his offices.

(c) On or around 4 September 1998, 14 non-governmental organisations (NGOs) issued a joint press statement calling on the defendant to 'account properly' for the plaintiff's dismissal from his public offices.

(d) The offending words and/or defendant's words in fact formed a direct response to a question posed by a member of the press at the press conference.

Therefore, in my view, not only has the defendant satisfied the requirements of the tests as stipulated in *Reynolds*, the very public or the interested parties of the public, themselves, have sought the explanation which the Prime Minister was bound to provide. The only issue is whether the defendant was malicious. If malice is obvious, then the defence of qualified privilege fails.

Was there malice?

It is clear that the defendant could have spoken the words complained of as soon as he was informed by the police of the plaintiff's involvement in the acts of gross indecency. However, he did not do so. He could have also made statements contained in the impugned words immediately after the plaintiff's removal as the Deputy Prime Minister and the Deputy President of UMNO. Yet he did not do so. He only spoke the words complained of following the convictions of Munawar and Sukma on charges of acts of gross indecency committed on them by the plaintiff and which convictions were widely published and thus well within the knowledge of the public at large at the date and time when the defendant spoke the impugned words. The defendant's words spoken were in response to the plaintiff's attacks against the government, himself and UMNO. To my mind, there is no place at all in this case for the plea of malice. Further, the defendant's words were also in response to the calls on him to explain the removal of the plaintiff as the Deputy Prime Minister as well as the Deputy President of UMNO. This to my mind indicates a mind devoid of malice.

It is important that the primus inter pares of the country and his cabinet colleagues be protected from such frivolous, vexatious and abusive suits. Otherwise rather than running the country towards achieving peace and prosperity for its citizens, the officials of the government will forever be looking over their shoulders for fear of being dragged to court with an unwanted, but well heralded suit. Whilst admittedly no one is above the law, yet the Court must be ever vigilant, never indolent, ever watchful, never fearful of its duty to check on the conspiratorial machinations of parties or persons motivated with the express desire of dragging top officials who run the country, to court, with intent to cause nothing more than embarrassment to such officials.

Having considered all issues raised by both parties I have no hesitation in concluding that the plaintiff's claim is one that is 'obviously unsustainable'. I therefore hold that this is a frivolous and vexatious suit and an abuse of the process of the court. I grant the defendant's application and order the suit to be struck out under O 18 r 19(1)(a), (b) and (d) of the

A RHC and also under the inherent jurisdiction of the court. The defendant will have his costs.

Defendant's application allowed.

Reported by Andrew Christopher Simon

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